IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 15
	§	
ARCHER LIMITED,[1]	§	Case No. 17-33103 (___)
	§	
Debtor in a foreign proceeding.	§	
	§	

VERIFIED PETITION FOR RECOGNITION OF FOREIGN MAIN PROCEEDING AND GRANTING RELATED RELIEF

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

Maxime Bouthillette (the "Petitioner"), in his capacity as duly appointed and court authorized foreign representative (the "Foreign Representative") of the above-captioned Debtor (the "Debtor"), hereby files this Verified Petition (the "Petition") for entry of an order: (i) recognizing the Bermuda Proceeding (as defined herein) as a foreign main proceeding pursuant to sections 1515 and 1517 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the

[1] The "Debtor" in this chapter 15 case as defined in 11 U.S.C. § 1502(1) is Archer Limited and the Debtor's Bermuda Company Registration Number is 40612. The Debtor's registered offices are located at 4th Floor, Par-la-Ville Place, 14, Par-la-Ville Road, Hamilton, Bermuda HM08.

"Bankruptcy Code"); (ii) granting relief pursuant to section 1520; and (iii) granting further relief pursuant to sections 105(a), 1507(a), 1509(b)(2)-(3), 1521(a), and 1525(a). In support of this Petition, the Petitioner has filed simultaneously herewith and incorporates by reference the Declaration of Maxime Bouthillette in Support of Verified Petition for Recognition and Chapter 15 Relief (the "Bouthillette Declaration")[2] and the Declaration of Andrew Martin in Support of Verified Petition for Recognition and Chapter 15 Relief (the "Martin Declaration").

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a) and (b) and 11 U.S.C. § 1501. Venue is proper in this district pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

BACKGROUND

A. The Debtor, the Group, and the Foreign Representative

2. The Debtor is an exempted limited company incorporated under the laws of Bermuda. The Debtor's registered office is located at 4th Floor, Par-la-Ville Place, 14, Par-la-Ville Road, Hamilton HM08, Bermuda. The Debtor is the parent company of a group of subsidiaries (together with the Debtor, the "Group") that operate in the global oilfield services industry. The Debtor is a publicly traded company whose shares trade on Oslo Børs in Norway.

3. No person or entity owns, directly or indirectly, 10% or more of the equity interests of the Debtor other than Seadrill Limited.

4. Maxime Bouthillette, the Petitioner and Foreign Representative, serves as the Debtor's President Western Hemisphere, General Counsel, and Executive Vice President. The

[2] Capitalized terms used herein and not otherwise defined have the meaning set forth in the Explanatory Statement and Scheme, copies of which are attached to the Bouthillette Declaration. Attached hereto as **Exhibit "A"** is a Group Structure Chart.

Petitioner has served in various capacities for the Debtor since August 2010. Prior to joining the Debtor, the Petitioner held positions with BJ Services, Schlumberger Limited, and Baker Hostetler LLP.

B. THE BUSINESS OF THE GROUP

5. The Group's services include: (i) platform drilling, predominately located in the North Sea; (ii) land drilling, predominately in South America; and (iii) engineering services covering detailed design, construction, commissioning, maintenance, intervention, plugging and abandonment, and decommissioning of drilling facilities. The Group collectively employs approximately 5,000 people and operates in 40 locations over 19 countries.

C. THE GROUP'S CAPITAL STRUCTURE AND LIQUIDITY CONSTRAINTS

6. The Debtor is a borrower under a Secured Multicurrency Term and Revolving Facility Credit Agreement between, among others, the Debtor, the Agent, and the Scheme Creditors, dated as of November 11, 2010, as the same has been amended and restated on various dates thereafter (as further defined and described in the Scheme and Explanatory Statement, the "Existing Facility Agreement"). The aggregate lending commitments under Existing Facility Agreement are $601,750,000. The Existing Facility Agreement is guaranteed by certain subsidiaries of the Debtor that are members of the Group, including subsidiaries that are based, and have assets located, in the United States. As of April 28, 2017, the total aggregate commitments available under the Existing Facility Agreement had been drawn.

7. The Existing Facility Agreement is secured by liens on various assets of the Group, and includes share pledges over direct subsidiaries of the Debtor, an assignment of intercompany debts, a debenture granted by Group company Limay Drilling Rigs Limited and security agreements governed by the laws of the United States and executed by each subsidiary

guarantor incorporated in the United States. The security is granted by the Debtor and subsidiary guarantors that are members of the Group to the Agent for the benefit of the Scheme Creditors (the lenders under the Existing Facility Agreement).

8. Beginning on May 11, 2017, the Debtor is required to make quarterly repayment installments of $25 million on the Existing Credit Facility. Scheme Creditors representing 94.275% in value of the amounts outstanding under the Existing Facility Agreement (collectively, the "Consenting Lenders") have agreed, among other things, to defer their entitlement to the repayment installment due on May 11, 2017 pursuant to a Lock-up Agreement entered into by the Debtor, the Consenting Lenders, and the Agent.[3] As set forth in the Lock-up Agreement, the Consenting Lenders and Agent have further agreed to, among other things, promptly take all actions to support, facilitate, implement, consummate or otherwise give effect to the Scheme, including voting in favor of any matter or proposal which is necessary or desirable to support, facilitate, implement, consummate or otherwise give effect to Scheme.

9. The Existing Facility Agreement is proposed to be amended pursuant to the Scheme as set forth below.

10. Archer Topaz Limited, a wholly owned subsidiary of the Debtor and a member of the Group, is the sole borrower under that certain Credit Facility Agreement with BNP Paribas Fortis SA/NV, as lender (the "Archer Topaz Facility"). As of April 28, 2017, the equivalent of € 23.7 million was outstanding under the Archer Topaz Facility. It is anticipated that, independent from the Scheme, the Archer Topaz facility will be amended as described in the Explanatory Statement.

[3] The Debtor did pay the proportionate share of the $25 million owed to the Scheme Creditor that has not entered into the Lock-Up Agreement. The payment was for $1.5 million plus interest.

11. The Debtor, together with Archer Norge AS, is a borrower under the Secured Danske Bank Overdraft Facility Agreement. In addition, Archer Well Company, Inc. is a member of the Group and the borrower under the secured DNB Overdraft Facility Agreement (together with the Dankse Bank Overdraft Facility Agreement, the "Overdraft Facility Agreements"). The overdraft limit under each Overdraft Facility Agreement was $41.7 million. As of April 28, 2017, the Group had not drawn any amounts under the Danske Overdraft Facility Agreement and the DNB Overdraft Facility Agreement. Pursuant to the Amendment and Restatement Agreement, the Overdraft Facility Agreements will be cancelled on the Restructuring Effective Date.

12. The Company's other indebtedness, including indebtedness to trade creditors, will not be impacted by the Scheme.

D. Events leading to Restructuring.

13. The recent decline in oil prices and continuing low oil price environment has had a significant negative impact on the Group's revenues, liquidity and available cash resources. This situation has been exacerbated by the Group's level of debt and the significant cash resources required for servicing the interest on this debt, as well as significant capital expenditure required for development assets. The Group has undertaken a number of measures to mitigate the impact of the low oil price environment and to address a working capital shortfall. However, the Debtor believed that a longer term solution is needed to strengthen the Group's liquidity position and reduce the burden of the Group's debt service obligations on its business. Accordingly, in May 2016, the Debtor began a process of extensive negotiations with its relevant stakeholders (including the Consenting Lenders and the Agent) in order to address these issues. As a result of these negotiations and following an exhaustive consideration of alternative options,

including potential asset sales, sales of equity, and refinancing of outstanding indebtedness, the Debtor has announced the Restructuring, of which the Scheme is an integral part.

E. THE SCHEME

14. Pursuant to the Scheme, the Debtor will effect certain amendments to the Existing Facility Agreement, pursuant to an Amendment and Restatement Agreement. The Amendment and Restatement Agreement will effectuate, among other things, the following amendments to the Existing Facility Agreement:

a. *The Debtor as sole borrower:* The Debtor will be the sole borrower under the Existing Facility Agreement, as amended, provided that additional borrowers may be added with the consent of the Majority Lenders.

b. *Increase of Total Commitments and Re-Tranching*: The Total Commitments under the Existing Facility Agreement, as amended, shall be increased from a total of $601,750,000 to a total of $654,710,000. This will be divided between three tranches:

   i. a new super senior tranche revolving facility of $24,070,220.70 (Facility A) in which each of the Scheme Creditors may elect to participate in accordance with Section 5 of Part C of the Explanatory Statement. In the event that a Scheme Creditor does not elect to participate, the Overdraft Facility Lenders will take up the Facility A Rump in the proportions calculated pursuant to the Scheme;

   ii. the existing revolving facility of $245.516,250 (Facility B) of which $28,884,264.80 will be split equally between the Overdraft Facility Lenders and the remainder will be held by the Scheme Creditors (collectively in proportion to their current participations); and

   iii. term loan of $385,123,529.30 (Term Facility) which represents commitments of the Scheme Creditors under the existing revolving facility which will be converted on the Restructuring Effective Date into a term loan with principal repayments due on March 30, 2020 and June 30, 2020 with the balance due on September 30, 2020.

c. *Inclusion of the Guarantee Facility of $10 million:* Provisions will be added into the Existing Facility Agreement which set out the terms of the new super senior Guarantee Facility, which will replace the DNB Guarantee Facility. Each of the Scheme Creditors may elect to participate in accordance with Section 5 of Part C of the Explanatory Statement. In the event that a Scheme Creditor does not elect to participate, the Overdraft Facility Lenders will take up the Guarantee Facility Rump in the proportions calculated pursuant to the Scheme.

d. *Extraordinary repayment of $1.3 million:* An extraordinary repayment in the amount of USD 1.3 million will be made by the Scheme Company with a corresponding reduction of the Total Commitments under the Amended Facility Agreement upon the amendments to the Archer Topaz Facility described in the Explanatory Statement becoming effective.

e. *Maturity to be extended to 30 September 2020:* The final maturity date on which the borrowers must repay all amounts outstanding under the Finance Documents will be extended from May 11, 2018 to September 30, 2020.

f. *Introduction of a PIK margin:* In addition to the current interest rate, a PIK margin of 1% per annum will accrue on each Loan during the period from January 1, 2019 to September 30, 2020 if certain debt-to-EBITDA thresholds have been exceeded. The PIK margin will be added to the principal amount of the Loan and become cash payable on the final maturity date.

g. *A cash sweep mechanism:* There will be a new semi-annual cash sweep which will require the Debtor to procure that an amount equal to 90% of Available Liquidity (as defined in the Amended Facility Agreement) will be used to prepay the loans outstanding under the Amended Facility Agreement and the loans under the amended and restated Archer Topaz Facility pro rata to the amounts outstanding.

h. *Changes to the quarterly reduction of the Total Commitments:* The Existing Facility Agreement provides that the Total Commitments will be reduced by $25 million quarterly starting on May 11, 2017. These reductions will be suspended. Instead, the Total Commitments will be reduced by a lesser quarterly amount of $10 million starting on March 30, 2020.

i. *Financial covenants to be amended:* The financial covenants in the Existing Facility Agreement will be amended as follows:

   i. the leverage ratio covenant, equity ratio covenant and total equity covenant in the Existing Facility Agreement will be removed;

   ii. inclusion of a covenant that the Debtor ensure that the Group maintains free liquidity, being, in broad terms, cash, cash equivalents and committed but undrawn facilities, of at least $30 million;

   iii. inclusion of a covenant that the Debtor ensure that the Group maintains 12 months rolling nominal EBITDA of minimum $45 million during 2017, $55 million during 2018, $65 million during 2019 and $85 million during 2020;

iv. inclusion of a covenant that twelve-month rolling reported earnings before interest, taxes, depreciation, and amortization shall be at all times positive (above $0); and

v. inclusion of a covenant that the Debtor ensure that the Group's capital expenditure does not exceed $25 million during 2017 and $40 million for each financial year thereafter with an adjustment for additional equity funds raised of above $75 million.

j. *Change of control to be amended:* The change of control thresholds will be reduced to reflect the dilution of the share capital which results from the issuance of the Private Placement Shares and the Subsequent Offering Shares.

k. *Undertaking in relation to restructuring of the Archer Topaz Facility:* The Debtor will undertake to ensure that the Archer Topaz Facility is amended so that it is consistent with the agreed terms described in paragraph 5.24 of Part B of the Explanatory Statement.

l. *Additional security (Archer Emerald):* Archer Emerald (Bermuda) Limited, a member of the Group, owns a modular rig known as the "Archer Emerald" which will be offered as collateral to the Scheme Creditors and the lenders under the Archer Topaz Facility. The new first ranking security will be granted to a joint security agent to be held on behalf of the Scheme Creditors and BNP Paribas Fortis SA/NV in its capacity as lender under the Archer Topaz Facility. It will be granted by the later of (i) the date the refinancing of the Archer Topaz Facility is concluded, and (ii) May 15, 2017. The proceeds received or recovered by the joint security agent shall be split between the Scheme Creditors and BNP Paribas Fortis SA/NV in the order of priority set out in the Term Sheet. This arrangement will necessitate an intercreditor agreement between the Scheme Company, the Agent, BNP Paribas Fortis SA/NV and the joint security agent to set out the terms on which security is shared.

m. *Removal of Seadrill:* Seadrill to be deleted from all Events of Default in which it is currently referred to in the Existing Facility Agreement.

15. The mechanics of the Scheme will authorize and instruct the Debtor to execute, among other documents, the Amendment and Restatement Agreement on behalf of Scheme Creditors on the Scheme Effective Date. The Amendment and Restatement Agreement will be subject to a number of conditions precedents, each of which must be satisfied before the transactions contemplated by the Amendment and Restatement Agreement become effective.

These conditions precedent are further described in the Explanatory Statement and include, among others:

a. entry into the Reaffirmation Agreement;

b. entry into the Assumption Agreement;

c. entry into the Amendment Fee Letter;

d. full repayment of amounts owed under, and cancellation of, the Overdraft Facility Agreement;

e. refinancing of all guarantees issued under the DNB Guarantee Facility in accordance with the Guarantee Facility; and

f. delivery of a certificate by an authorized signatory of the Debtor which confirms that the Debtor has raised new equity cash proceeds of at least USD 60 million.

F. ANCILLARY RESTRUCTURING TRANSACTIONS

16. The Scheme will be implemented alongside a wider "Restructuring" of the Group's indebtedness. This will include the cancellation, on or before the Restructuring Effective Date, of the Overdraft Facility Agreements and the DNB Guarantee Facility. In addition, the Archer Topaz Facility will be amended as described in the Explanatory Statement.

G. COMMENCEMENT OF THE BERMUDA PROCEEDING AND ACTIVITY TO DATE

17. The Debtor applied to the Bermuda Court on May 12, 2017 for an order directing it to convene a meeting in respect of the Scheme (the "Scheme Meeting") for a single class of creditors only - namely, the Scheme Creditors under the Scheme. The Scheme Creditors are the only creditors whose claims will be comprised by the Scheme. The purpose of the proposed Scheme Meeting is to consider and, if appropriate, approve the Scheme. Martin Declaration, at ¶¶ 27-28.

18. On May 12, 2017, the Bermuda Court entered the order directing it to convene a meeting (the "Convening Court Order"), a copy of which is attached to the Debtors' chapter 15

petition [Docket No. 1]. Pursuant to the Convening Court Order, the Scheme Meeting will be held on May 30, 2017 at 10:00 a.m. (Oslo time) at the offices of Seatankers Management A/S, Bryggegata 3, 0250 Oslo, Norway. A notice of the Scheme Meeting was distributed to Scheme Creditors and the Agent on May 12, 2017.

19. The Convening Court Order, among other things, also: (i) declares that the Petitioner is authorized to act as foreign representative in respect of any Chapter 15 proceeding; (ii) confirms and approves the form of the documents to be sent to the Scheme Creditors; and (iii) sets the date, time and location of the Scheme Meeting at which Scheme Creditors will consider and can object to the proposed Scheme.

H. The Debtor's Connections to the United States and Need for Chapter 15 Relief

20. Certain of the Debtor's subsidiaries are incorporated in the United States, including Archer Well Company Inc., a guarantor under the Existing Facility Agreement. In addition, the Debtor has employees and direct and indirect interests in property located, and conducts business through its subsidiaries, in the United States. Among such assets are assets of the Debtor's subsidiaries that are pledged as collateral to secure obligations under the Existing Facility Agreement. The Group's United States business activities include substantial business conducted at facilities in Houston and Conroe, Texas. Critical employees of the Debtor (and employees and contractors of subsidiaries of the Debtor) are based in the Houston, Texas metropolitan area. Specifically, the Petitioner, who serves as President Western Hemisphere, General Counsel and Executive Vice President of the Debtor resides in The Woodlands, Texas and works from the Group's Houston office. Lastly, the Debtor's assets in the Southern District of Texas include cash in the amount of approximately $20,000 currently on deposit in an Andrews Kurth Kenyon LLP client trust account.

21. The purpose of recognition of the Scheme in the United States is to help ensure its enforceability and effectiveness in the United States. The Debtor, the other members of the Group, the Consenting Lenders, and the Agent wish to ensure that no creditors can bypass the effect of the Scheme by commencing litigation or taking other actions in the United States. Although the Debtor is not now a party to any such litigation in the United States, implementation of the Scheme is important to the Restructuring, and as noted above, the Debtor has committed to seek this Court's recognition and enforcement of the Scheme in order to ensure, among other things, that the Debtor, its subsidiaries, and their business and assets in the United States are not subject to collateral attack following the Scheme Effective Date.

RELIEF REQUESTED

22. The Petitioner respectfully requests that this Court enter an order, substantially in the form of the proposed order attached hereto as **Exhibit "B**," pursuant to sections 105(a), 1507(a), 1509(b)(2)-(3), 1515, 1517, 1520, 1521(a) and 1525(a) of the Bankruptcy Code that:

a. recognizes the Bermuda Proceeding as a foreign main proceeding (as defined in section 1502 of the Bankruptcy Code) and grants the Debtor all of the relief afforded to such proceedings pursuant to section 1520 of the Bankruptcy Code;

b. recognizes the Petitioner as a "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the Bermuda Proceeding;

c. entrusts the administration of any and all of the Debtor's assets within the territorial jurisdiction of the United States to the Petitioner;

d. provides that the Scheme Sanction Order (as defined in the Scheme) in respect of the Debtor's Scheme and the Restructuring Documents (as defined in the Scheme) are recognized, granted comity, and entitled to full force and effect as between the parties thereto in accordance with their terms, and that such terms shall be binding and fully enforceable on all Scheme Creditors (as defined in the Scheme);

e. provides that, in accordance with the Scheme Sanction Order, the Debtor's execution of the Scheme Restructuring Documents on behalf of the Scheme Creditors shall have full force and effect;

f. provides that any judgment, wherever and whenever obtained, to the extent such judgment is a determination of the liability of the Debtor, any member of the Group or the Agent, with respect to any debt cancelled, discharged or restructured under or pursuant to the Scheme, the Restructuring Documents or as a result of Bermuda law relating to the Restructuring is unenforceable in the United States;

g. permanently enjoins all Scheme Creditors (as defined in the Scheme) from commencing or continuing in any manner, directly or indirectly, including by way of counterclaim, any action, suit or other proceeding (including, without limitation, any judicial, quasi-judicial, arbitral or administrative action, proceeding or process whatever in any judicial, arbitral, administrative or other forum), employing any process, or performing any act to collect, recover or offset any debt cancelled, discharged or restructured under the Scheme or Scheme Restructuring Documents or as a result of Bermuda law relating to the Restructuring, or seeking any discovery related thereto;

h. permanently enjoins Scheme Creditors from (i) disposing or otherwise taking any action against any property of the Debtor or member of the Group located within the territorial jurisdiction of the United States, or (ii) taking or continuing any act to obtain possession of or exercise control over, such property;

i. permanently enjoins the commencement of any suit, action or proceeding in the territorial jurisdiction of the United States to resolve any dispute arising out of any provision of the Scheme, the Restructuring Documents or Bermuda law relating thereto;

j. permanently enjoins the Scheme Creditors from taking any action inconsistent with the Scheme, including, without limitation, against the Debtor, the Group or any property of Debtor or Group within the territorial jurisdiction of the United States;

k. permanently enjoins Scheme Creditors from commencing or continuing in any manner, directly or indirectly, including by way of counterclaim, any action, suit or other proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, or administrative action, proceeding or process whatever in any judicial, arbitral, administrative or other forum), or employing any process, against the Foreign Representative (personally or in such capacity), the Debtor or any member of the Group in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with this chapter 15 case, the Scheme or the Restructuring Documents;

l. provides that no action taken by the Petitioner in preparing, disseminating, applying for, implementing or otherwise in connection with the Scheme, the Restructuring Documents, any order entered in respect of this Petition, the chapter 15 case, any further order for additional relief in the chapter 15 case, or any adversary proceedings or contested matters in connection therewith, will be deemed to constitute a waiver of any immunity afforded the Petitioner as Foreign

Representative, including without limitation pursuant to section 1510 of the Bankruptcy Code;

m. provides that this Court shall retain jurisdiction with respect to the effect, enforcement, amendment or modification of such order; and

n. provides such other and further relief as the Court deems proper and just (together with sub-paragraphs a through m, the "Relief Requested").

BASIS FOR RELIEF

23. The Relief Requested is based on the provisions of Chapter 15 (and certain other provisions) of the Bankruptcy Code. As directed by the statute, in interpreting Chapter 15, a court is to "consider its international origin, and the need to promote an application of [Chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions." 11 U.S.C. § 1508.[4]

A. THE BERMUDA PROCEEDING SHOULD BE RECOGNIZED AS A FOREIGN MAIN PROCEEDING

24. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, the Court shall enter an order recognizing a foreign proceeding as a foreign main proceeding if: (1) such foreign proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515 of the Bankruptcy Code. See *In re Overnight & Control Comm'n of Avánzit, S.A.*, 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008). The Bermuda Proceeding, the Petitioner and this Petition satisfy all of the foregoing requirements.

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[4] The legislative history notes that "[i]nterpretation of [Chapter 15] on a uniform basis will be aided by reference to the Guide [to Enactment of the UNCITRAL MODEL LAW on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997) (the "Guide")] and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well." H.R. REP. NO. 109-31, pt. 1, at 109-110 (2005).

i. The Bermuda Proceeding is a Foreign Main Proceeding

25. The Bermuda Proceeding is a foreign main proceeding and, as such, satisfies the first condition for the entry of an order recognizing such proceeding under section 1517(a) of the Bankruptcy Code.

26. As a threshold matter, the Bermuda Proceeding, in which the Debtor is seeking to restructure a series of its funded indebtedness, is a "foreign proceeding" as that term is defined in Section 101(23) of the Bankruptcy Code.[5] *See In re Board of Directors of Hopewell Intern. Ins. Ltd.*, 238 B.R. 25 (Bankr. S.D.N.Y. 1999) (holding that a proceeding in a Bermuda court for approval of a scheme of arrangement executed under the Companies Act was a "foreign proceeding" for purposes of chapter 15) (aff'd, *In re Petition of Board of Directors of Hopewell International Insurance Ltd.*, 275 B.R. 699 (S.D.N.Y. 2002)). As in *Hopewell*, the Bermuda Court has substantial control and supervision over the Debtor's assets and affairs and implementation of the Scheme. *See Hopewell*, 238 B.R. 25, at 50-52 (detailing level of Bermuda Court's involvement in implementation of scheme of arrangement under the Companies Act); and Martin Declaration at ¶¶ 23-30.

27. Beyond qualifying as a "foreign proceeding" under section 101(23), the Bermuda Proceeding here qualifies as a "foreign main proceeding," which is defined in the Bankruptcy Code as "a foreign proceeding pending in the country where the debtor has the center of its main interests." *See* 11 U.S.C. § 1502(4); *see also* 11 U.S.C. § 1517(b)(1) (providing that an order of recognition as a foreign main proceeding shall be entered if the foreign proceeding "is pending in the country where the debtor has the center of its main interests"). The term "center of main

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[5] *See* 11 U.S.C. §101(23), defining foreign proceeding as "a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation."

interests" (or "COMI"), is not defined in the Bankruptcy Code. In the absence of evidence to the contrary, a debtor's COMI is presumed to be located at its registered office. *See* 11 U.S.C. § 1516(c).

28. In addition to the location of the debtor's registered office, courts in the Fifth Circuit have identified five non-exhaustive factors in determining a debtor's COMI:

i. the location of those who actually manage the debtor (which could be the headquarters of a holding company);

ii. the location of the debtor's headquarters;

iii. the location of the debtor's primary assets;

iv. the location of the majority of the debtor's creditors or the majority of creditors affected by the case; and

v. the jurisdiction whose law would apply to most disputes.

See Lavie v. Ran (*In re Ran*), 607 F.3d 1017, 1023 (5th Cir. 2010) (citing *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) aff'd, 371 B.R. 10 (S.D.N.Y. 2007)).

29. As stated above, the Debtor's registered office is located in Bermuda. The Debtor's corporate records of account are physically maintained in Bermuda. While the Debtor's directors and executive officers are dispersed throughout the world, the Debtor holds its regular board meetings and annual shareholder meetings in Bermuda, and Bermuda is the residence of the corporate secretary. In addition, while the Group has offices and other facilities around the world, the Debtor maintains an office in Bermuda, through which it conducts substantial business. The Debtor also has important contractual relationships governed by Bermuda law, including corporate services agreements and agreements with vendors and customers.

30. In addition to the Debtor's incorporation and maintenance of its registered office in Bermuda and its historical operations there, the Debtor's significant efforts to implement the

Scheme and broader Restructuring have been focused on activities in Bermuda. These activities include attending hearings in Bermuda to obtain approval of the Scheme.

31. For all of the foregoing reasons, the Bermuda Proceeding is, and should be recognized as, the foreign main proceeding in respect of the Debtor.

ii. The Petitioner is a Foreign Representative Who Is a Person

32. The second requirement for recognition of a foreign proceeding under section 1517(a) of the Bankruptcy Code is that the foreign representative applying for recognition be a "person or body." 11 U.S.C. § 1517(a)(2).

33. The term "foreign representative" is defined in section 101(24) of the Bankruptcy Code as "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24). Under section 101(41), the "term 'person' includes [an] individual . . . ." 11 U.S.C. § 101(41).

34. The Petitioner is an individual who has been (1) appointed by the Debtor's board as foreign representative of the Bermuda Proceeding, and (2) declared as authorized to act as the Debtor's "foreign representative" pursuant to the Convening Court Order. Bouthillette Declaration, at ¶ 5. Thus, he satisfies the second requirement for entry of an order recognizing the Bermuda Proceeding as a foreign main proceeding.

iii. The Petition Meets the Requirements of Section 1515

35. The third and final requirement for recognition of a foreign proceeding under section 1517(a) of the Bankruptcy Code is that the petition for recognition meets the procedural requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a)(3).

36. Here, all of the requirements of section 1515 of the Bankruptcy Code have been met. First, the Debtor's Chapter 15 case was duly and properly commenced by the Petitioner through the filing of this Petition as required by section 1515(a) of the Bankruptcy Code.

37. Second, evidence of the existence of the Bermuda Proceeding and the appointment of the Petitioner as the foreign representative have been provided to the Court as required under section 1515(b)(1) and (d) of the Bankruptcy Code. *See* Bouthillette Declaration. Exhibits A and C (true and correct copies of the Board Minutes and the Convening Court Order).

38. Third, in accordance with section 1515(c) of the Bankruptcy Code, the Bouthillette Declaration contains a statement identifying the Bermuda Proceeding as the only foreign proceeding currently pending with respect to the Debtor. *See* Bouthillette Declaration, at ¶ 19.

39. Accordingly, each of the requirements of section 1517(a) has been satisfied, and entry of an order recognizing the Bermuda Proceeding as a foreign main proceeding is proper.

B. THE DEBTOR IS ENTITLED TO AUTOMATIC RELIEF UNDER SECTION 1520

40. Section 1520(a) of the Bankruptcy Code sets forth statutory protections that automatically result from the recognition of a foreign proceeding as a foreign main proceeding, *see* 11 U.S.C. § 1520(a), including the application of the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and its property within the territorial jurisdiction of the United States. Thus, once the Court recognizes the Bermuda Proceeding as a foreign main proceeding, no further showing is required to obtain such protections.

C. DISCRETIONARY RELIEF UNDER SECTION 1521 SHOULD ALSO BE GRANTED

41. To ensure the enforceability of the Scheme in the United States and to protect the assets of the Debtor and interests of all Scheme Creditors, relief under Section 1521 is

appropriate under the circumstances. Specifically, the Foreign Representative respectfully requests that this Court exercise its power under Section 1521 (and Section 1507) to grant the relief requested that goes beyond the automatic relief provided by Section 1520 so that the Scheme is effective and enforceable in the United States.

42. The standard for issuance of relief under section 1521 of the Bankruptcy Code is the same as that which is required for an injunction. 11 U.S.C. § 1521(e).[6] Accordingly, the following factors applicable to the issuance of an injunction apply to this Petition: (i) a substantial likelihood of success on the merits; (ii) a substantial threat that the movant will suffer irreparable injury if the injunction is not issued; (iii) that the threatened injury to the movant outweighs any damage the injunction might cause the opponent; and (iv) that the injunction will not disserve the public interest. *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989); *see also Dallas Cowboy Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1187 (5th Cir. 1979). The Foreign Representative contends that these four factors are easily met.

i. Substantial Likelihood of Success on the Merits

43. There is no serious dispute that the Bermuda Proceedings will be recognized, as the Bermuda Proceedings are clearly "foreign proceedings" under Chapter 15. *See* ¶ 26, supra. In addition, for the reasons set forth herein, the Foreign Representative submits that the Debtor's COMI is Bermuda. Even if the Court were to conclude that the Bermuda Proceedings were foreign nonmain proceedings, the Court could still grant relief under Section 1521 to the Foreign Representative, and doing so would indeed be "necessary to effectuate the purpose of this

[6] However, an adversary proceeding need not be filed in order to obtain relief under section 1519. *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850, 858-59 (Bankr. C.D. Cal. 2008); *In re Ho Seok Lee,* 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006).

chapter and to protect the assets of the debtor…". 11 U.S.C. § 1521(a). Accordingly, there is a high likelihood that, irrespective of whether the Bermuda Proceeding is recognized as foreign main or nonmain proceedings, the Foreign Representative will succeed in receiving relief under section 1521 of the Bankruptcy Code.

ii. Substantial Threat of Irreparable Injury If Injunction Not Granted

44. There is clearly a substantial threat of irreparable harm to the Debtor if injunctive relief under Section 1521 is not granted. The Debtor has direct and indirect property interests in the United States that are subject to the Bermuda Proceedings that are vulnerable to potential adverse actions. Consequently, without the granting of injunctive relief under Section 1521, the Debtor's assets will remain unprotected from unwarranted creditor actions in the United States. Such actions would undoubtedly interfere with the orderly implementation of the Scheme and broader Restructuring.

45. It is well established that irreparable harm to a debtor's estate is present where local actions are not enjoined and can disrupt a foreign proceeding. *See, e.g.*, In re Garcia Avila, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) ("irreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and fair distribution of assets in a single, centralized forum" (quoting Collier on Bankruptcy ¶ 304.05, at 304-21 (15th ed. Rev. 2003)). The Foreign Representative submits that the second prong of the injunctive relief standard is therefore satisfied under these circumstances.

iii. Threatened Injury to the Debtor Outweighs Any Damage to Third Parties

46. The relief requested herein will benefit the Debtor and the Scheme Creditors by ensuring an equitable and orderly implementation of the Scheme. *See, e.g., In re Crystallex Int'l Corp.*, No. 11-14074 (Bankr. D. Del. Dec. 28, 2011), ECF No. 20 (stating that failing to issue a

restraining order against creditors in a chapter 15 case could "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors"). Leaving the Debtor's assets exposed to attack in the United States could lead to a piecemeal distribution of its assets and hinder the Group's ability to conduct operations, a reality that outweighs any perceived harm to a Scheme Creditor that does not approve of the Scheme. Indeed, the Foreign Representative submits that any dissenting Scheme Creditor will ultimately be far better off if the Scheme is approved and recognized in the United States. Accordingly, the threatened injury to the Debtor that would result if relief is not granted under Section 1521 clearly outweighs any damage third parties would suffer as a result of such relief.

iv. Injunction Will Serve Public Interest

47. The relief requested under Section 1521 will not disserve the public interest; on the contrary, granting such relief is in the public interest as it will facilitate a cross-border reorganization that will provide a benefit to the Debtors' creditors. *See, e.g., Cunard S.S. Co. Ltd. v. Salen Reefer Svcs. A.B.*, 773 F.2d 452, 458 (2d Cir. 1985) ("The granting of comity to a foreign bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.").

v. Granting Relief Is Proper as Interests of Scheme Creditors and Other Interested Parties are Sufficiently Protected

48. The relief requested under section 1521 is founded on the Congressional mandate to cooperate with foreign proceedings and foreign representatives to promote the goals of chapter 15. *See* 11 U.S.C. § 1525(a) ("Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee."). Such relief is "appropriate," as that term is used in section 1521, because it is necessary to ensure the success of the Bermuda Proceeding, the Scheme and the

Restructuring. The Court may grant such relief, however, only if the interests of "the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a) (adopting Article 22 of the Model Law).

49. It is clear that the interests of Scheme Creditors and all other interested parties are sufficiently protected by the treatment afforded to them in the Scheme and the process by which the Scheme will be approved. That Bermuda courts exercise effective oversight of schemes of arrangement such as the Scheme was established in the *Hopewell* chapter 15 proceedings and confirmed on appeal. *See* ¶ 26, supra; *In re Board of Directors of Hopewell Intern. Ins. Ltd.*, 238 B.R. 25 (Bankr. S.D.N.Y. 1999) (affirmed *In re Petition of Board of Directors of Hopewell International Insurance Ltd.*, 275 B.R. 699 (S.D.N.Y. 2002)). Accordingly, the Court may grant relief under Section 1521 because the interests of Scheme Creditors and other interest entities are sufficiently protected in the Bermuda Proceeding.

PRAYER FOR RELIEF

50. The Foreign Representative respectfully requests entry of an Order in the form of the proposed order filed contemporaneously herewith, thereby recognizing the Bermuda Proceeding as a foreign main proceeding and granting the other relief requested herein and all such other relief, at law or in equity, to which the Foreign Representative is justly entitled.

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Respectfully submitted,

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